

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

AS.No. 593 of 1994()

OS.202/1992 of ADDL.SUB COURT, ALAPPUZHA
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APPELLANT/PLAINTIFF:

N.K.VISWAMBHARAN, NELLIKAPPALLIL HOUSE, PERUMTHURUTHU MURI,
THANNEERMUKKOM SOUTH VILLAGE.

BY ADV. SRI.P.R.VENKETESH

RESPONDENT/DEFENDANT:

T.D.SWAMINATHAN, VELIYIL PUTHEN VEETIL, M.S.P.O., ALAPPUZHA.

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD
ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.No.593 of 1994

Dated, this the 3rd day of December, 2007

JUDGMENT

The plaintiff in O.S.No.202/1992 on the file of the Sub Court, Alappuzha is the appellant. The appellant filed a suit for money alleging that the respondent/defendant borrowed an amount of Rs.30,000/- on 15.2.1991 executing Ext.A1 promissory note, undertaking to repay the same with 15% interest. It is averred that in spite of repeated demands the respondent is not repaying the amount. The respondent filed a written statement denying the allegation that he borrowed Rs.30,000/-. Execution of promissory note was denied. It was contended that the promissory note was a fabricated document and it was not supported by consideration. It was also contended that the respondent was a subscriber to the chitty by name 'Syam Raj Kuries and Finance' of which the appellant's mother-in-law was the foreman and in connection with chitty he entrusted some blank signed papers with the chitty foreman. Appellant's mother-in-law had filed O.S.No.90/1991 before the Munsiff's Court against the respondent for recovery of money and that suit was dismissed. Hence using the signed blank papers the plaintiff had fabricated Ext.A1 promissory note and filed O.S.No.202/1992. On the side of plaintiff, PWs 1 and 2 were examined and Ext.A1 marked. Defendant himself gave evidence as DW1. The trial court found that the appellant failed to establish that he paid any amount to the respondent on

the basis of the alleged promissory note and dismissed the suit. Challenging that decree and judgment the plaintiff has filed this appeal.

2. Learned counsel appearing for the appellant/plaintiff has argued that the respondent/defendant had admitted his signature in Ext.A1. It is argued that the appellant gave evidence as PW1 and examined an independent witness to prove execution of Ext.A1 and so the burden is on the respondent to prove that it is not supported by law.

3. I find it very difficult to hold that the trial court went wrong in dismissing the suit wrongly casting burden of proof on the plaintiff. It is a case in which both sides adduced evidence. Trial court considered the evidence and found that the appellant failed to establish his case. Since both sides had adduced evidence the suit is to be decided on the evidence adduced. The specific case put forward by the appellant was that the respondent borrowed an amount of Rs.30,000/- on 15.2.1991. Appellant is the owner of 60 cents of land. According to him he is an employee of his mother-in-law and she paid an amount of Rs.2,500/- as salary to him, that too for supervising and looking after the business conducted by her. Appellant had admitted that he is owning a ration card and the annual income shown in the ration card is Rs.3,600/-. But at the same time he admitted that he is a regular money lender. In one stage he deposed that he had lent Rs.2,000/- and that was the maximum amount he used to lend on a particular occasion. Subsequently he deposed that the respondent borrowed Rs.2,000/-

Rs.3,000/-, Rs.4,000/-, etc. at different occasions. Thereafter he deposed that he always keep Rs.25,000/- in his house without depositing the same in the bank. According to him he is not depositing any amount in the bank. Court below after analysing the evidence of appellant as PW1 found that his case that he lent Rs.30,000/- on 15.2.1991 to the respondent cannot be treated as true. There is yet another aspect. A reading of Ext.A1 promissory note shows that after the text of the note two attestors affixed their signature and on the bottom of that two stamps were affixed on which the respondent had affixed his signature. Name of the respondent was written in his own handwriting. When a question was put to PW1 why the name of scribe was written on the foot of the note and on the right side of the stamp, his answer was that there was no space to write the name of scribe above the stamp. Considering all the aspects of the matter, I am of the view that Ext.A1 promissory was written subsequently in a signed blank paper. So the finding of the court below that the appellant failed to establish that the respondent borrowed an amount of Rs.30,000/- on 15.2.1991 is perfectly correct and does not call for any interference. There is no merit in the appeal. It is only to be dismissed.

In the result, appeal is dismissed.

**K. PADMANABHAN NAIR,
JUDGE.**

AS No.593/1994

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K.PADMANABHAN NAIR, J.

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JUDGMENT

3rd December, 2007.